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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 991

ALFONSO SPINELLI,
Libellant-Petitioner,

—against—

ISTHMIAN STEAMSHIP COMPANY, a corporation,
Respondent,

—against—

INTERNATIONAL TERMINAL OPERATING CO., INC.,
Respondent.

REPLY BY PETITIONER TO BRIEFS OF RESPONDENTS

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Reasons for Allowance of the Writ

The trial court, in making its findings of fact, based its decision on erroneous legal concepts. The Court stated (25a):

"* * * I do not believe that the cases have as yet reached the point of holding that a vessel is unseaworthy merely because one of its appliances fails when it is used by a stevedore in a manner for which it was not designed or intended. * * *"

This interpretation should be compared with the conclusion of Judge KALODNER in very recent case of *Ferrante* v. *Volusia Steamship Co.*, —— F. 2d (3 Cir. 1964) (not officially reported) where he concluded:

"* * * Whether the operation is regarded as 'stowage' of the piles of boards as a part of the discharge process, or the construction of a 'draft', or as the mere use of the ship's equipment—the manila ropes—the fact remains that the stevedore 'failed to perform safely, a basis for liability including negligent and non-negligent conduct alike', and that made the ship unseaworthy."

The *Ferrante* case, which was decided after the petition in this case was printed and filed, gives added support to the contentions in the petition. There is a conflict of the opinions in the Second Circuit on the one hand and in the Third and Fourth Circuits on the other hand. *Scott* v. *Isbrandtsen Co.*, 327 F. 2d 113, 127 (4 Cir. 1964). The *Ferrante* case is very similar to the present case because a finding of fact based on an erroneous interpretation of law was reversed. The court, in *Ferrante*, did not regard the factual findings of the trial judge untouchable where it was apparent that he misinterpreted the law. Similarly, in this case, it is apparent that the trial court misinterpreted the decisions discussed in our petition and supporting brief. The case involves a very important aspect of maritime law. There is diversity of opinion among the Courts of Appeal in at least three Circuits. The decision

of the Court below is not in accord with the decisions of this Court. For these reasons we again request that the petition be granted.

Respectfully submitted,

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